

Wisconsin Administrative Register

No. 616



Publication Date: April 14, 2007

Effective Date: April 15, 2007



Revisor of Statutes Bureau
<http://www.legis.state.wi.us/rsb/code.htm>

The 2005 – 06 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2005 – 06 Wisconsin Statutes and Annotations bound volumes are detailed below.
Any sales tax due must be added to these prices:

Hard Cover	Hard Cover	Soft Cover	Soft Cover
<u>With Postage</u>	<u>Without Postage</u>	<u>With Postage</u>	<u>Without Postage</u>
\$159.00	\$151.00	\$140.00	\$133.00

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

WisLaw[®] CD-ROM:

Up-to-date *WisLaw*[®] CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*[®] contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*[®] Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*[®] for their legal research. *WisLaw*[®] is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

WisLaw[®] is available only by annual subscription. *WisLaw*[®] End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, WI 53707–7840

Table of contents

Emergency rules now in effect.	Pages 4 to 8
Agriculture, Trade and Consumer Protection:	Rules relating to minimum acreage requirements for farm–raised deer hunting preserves. Rules relating to credit report security freezes.
Commerce:	<u>Financial Resources for Businesses and Communities, Chs. Comm 104–131</u> Rules relating to Woman–Owned Business Certification Program. Rules relating to tax credits and exemptions for internet equipment used in the broadband market.
Dentistry Examining Board:	Rules relating to the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia, and the requirements for each level.
Health and Family Services:	<u>Community Services, Chs. HFS 30–</u> Rules affecting ch. HFS 51 , relating to the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoption, and adoptions of children with special needs and affecting small businesses. [First Appearance]
Insurance:	Rules relating to preferred provider plan applicability dates and affecting small business plan limited exemption. Rules relating to underinsured and uninsured motorist coverage in umbrella and commercial policies.
Natural Resources:	<u>Fish and Game, etc., Chs. NR 1–</u> Rules relating to contracting for timber sale establishment services on state land. Rules relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.
Optometry Examining Board:	Rules relating to continuing education.
Regulation and Licensing:	Rules relating to substance abuse professionals.
Transportation:	Rules relating to allowing the operation of certain 2–vehicle combinations on certain highways without a permit.
Workforce Development:	<u>Workforce Solutions, Chs. DWD 11 to 59</u> Rules relating to child care rates. Rules affecting ch. DWD 56 , relating to child care enrollment underutilization. [First Appearance]

Public Works Construction, Chs. DWD 290–294

Rules relating to the adjustment of thresholds for application of prevailing wage rates.

Scope statements.**Pages 9 to 11**

Agriculture, Trade and Consumer Protection:

Rules affecting ch. ATCP 21, relating to certification of firewood dealers.

Natural Resources:

Rules affecting ch. NR 345, relating to dredging in navigable waterways to create a general permit for dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove algae, mussels, dead fish and similar large public nuisance deposits.

Transportation:

Rules affecting ch. Trans 117, relating to the occupational licensing program.

Submittal of rules to legislative council clearinghouse.**Page 12**

Commerce:

Rules relating to chs. Comm 2, 10, 14, 47 and 48, relating to flammable, combustible and hazardous liquids.

Health and Family Services:

Rules relating to ch. HFS 51, relating to adoption of children, to include preadoption training for first–time adoptive parents in private adoptions, international adoptions, and adoptions of children with special needs.

Revenue:

Rules affecting ch. Tax 1, relating to electronic funds transfer.

Workforce Development:

Rules affecting ch. DWD 56, relating to child care rates and affecting small businesses.

Rule–making notices.**Pages 13 to 19**

Commerce:

Hearings to consider rules affecting ch. Comm 10, relating to flammable, combustible and hazardous liquids.

Health and Family Services:

Hearing to consider rules affecting ch. HFS 51, relating to preadoption training for first–time adoptive parents in private adoptions, international adoptions and adoptions of children with special needs.

Workforce Development:

Hearing to consider rules affecting ch. DWD 56, relating to child care rates and affecting small businesses.

Submittal of proposed rules to the legislature.**Page 20**

Dentistry Examining Board:

CR 06–016 – Ch. DE 7, relating to the definition of “local anesthesia”.

Health and Family Services:

CR 06–086 – Ch. HFS 172, relating to public pools and water attractions.

Workforce Development:

CR 07–003 – Ch. DWD 290, relating to adjustment of thresholds for application of prevailing wage rates.

CR 07–009 – Chs. DWD 100 to 150, relating to unemployment insurance technical corrections.

CR 07–010 – Ch. DWD 295, relating to enforcement of indenture agreements.

Rule orders filed with the revisor of statutes bureau.

Page 21

Agriculture, Trade and Consumer Protection:

CR 06–085 – An order affecting ch. ATCP 156, relating to seed potato certification and grading.

Medical Examining Board:

CR 06–114 – An order affecting ch. Med 1, relating to the requirements for completion of the 3–step sequence of the United States Medical Licensing Examination (USMLE).

Natural Resources:

CR 06–023 – An order affecting chs. NR 127 and 160, relating to the Safe Drinking Water Loan Program.

CR 06–025 – An order affecting ch. NR 520, relating to balances in the Waste Management Program Revenue Account.

CR 06–037 – An order affecting chs. NR 10 and 45, relating to correcting management unit boundaries, clarifying trapping requirements, correcting cross–references, and update rules on the identification of tree stands on state lands.

CR 06–047 – An order affecting chs. NR 406, 407, and 410, relating to air pollution permit exemptions and air pollution permit exemption fees and affecting small business.

CR 06–079 – An order affecting chs. NR 406 and 410, relating to construction permit waivers and affecting small business.

Occupational Therapists Affiliated Credentialing Board:

CR 06–115 – An order affecting ch. OT 3, relating to continuing education waivers.

Optometry Examining Board:

CR 06–116 – An order affecting chs. Opt 1 and 3 to 8, relating to examinations, endorsement, delegation, TPA/DPA, renewal and continuing education relating to optometrists.

Transportation:

CR 06–128 – An order affecting ch. Trans 102, relating to proof of identity.

Workforce Development:

CR 06–138 – An order affecting ch. DWD 277, relating to notice to home care consumers and workers.

Emergency rules now in effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade & Consumer Protection (2)

1. Rules adopted amending **s. ATCP 10.47 (2) (c) and (3) (b) 3.**, relating to minimum acreage requirements for farm-raised deer hunting preserves.

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers state laws related to farm-raised deer. DATCP currently licenses deer farms and issues certificates for deer hunting preserves, pursuant to s. 95.55, Stats., and ch. ATCP 10, Wis. Adm. Code.

(2) Current law generally prohibits deer hunting preserves smaller than 80 acres. However, 2005 Wis. Act 359 (enacted effective May 3, 2006) provides a limited “grandfather” exemption for certain white-tailed deer hunting preserves previously licensed by the Department of Natural Resources (“DNR”). Under Act 359, a white-tailed deer hunting preserve is exempt from the 80-acre minimum size requirement if, *among other things*, the acreage of the hunting preserve is “not less than the acreage subject to the deer farm license on December 31, 2002.” This rule clarifies that the “acreage subject to the deer farm license on December 31, 2002” means the *hunting* acreage subject to the deer farm license on December 31, 2002. Without this interpretation, Act 359 would have no practical effect and would be rendered a nullity.

(3) The “grandfather” exemption in Act 359 is limited to hunting preserve operators who apply by November 1, 2006. DATCP must act on applications within 90 business days. Action may affect an operator’s ability to operate during the

2006 hunting season. DATCP is adopting this rule as an emergency rule, in order to facilitate timely action on applications. DATCP could not adopt this rule by normal rulemaking procedures in time to implement Act 359.

Publication Date: October 9, 2006
Effective Date: October 9, 2006
Expiration Date: March 7, 2007
Hearing Date: November 13, 2006

2. Rules adopted creating **ch. ATCP 112**, relating to credit report security freezes.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54 (12), Stats. to adopt rules related to identification required of consumers requesting credit report security freezes.

(2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an emergency rule the statute will be unclear regarding what constitutes proper identification for purposes of creating a security freeze, temporarily releasing a security freeze or permanently removing a security freeze from a consumer credit report.

(3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers to clearly place a security freeze on their consumer credit report while the permanent rulemaking process is completed.

Publication Date: January 19, 2007
Effective Date: January 19, 2007
Expiration Date: June 18, 2007
Hearing Date: February 12, 2007

Commerce (2) (Financial Resources for Businesses and Communities, Chs. Comm 104–131)

1. Rules adopted creating **ch. Comm 104**, relating to Woman-Owned Business Certification Program.

Exemption From Finding of Emergency

The Legislature, by section 5 (1) (a) in 2005 Wisconsin Act 358, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 5 (1) (b) of 2005 Wisconsin Act 358, this rule will remain in effect until March 1, 2007, or the date on which permanent rules take effect, whichever is sooner.

Plain Language Analysis

These emergency rules primarily specify (1) which businesses are eligible for becoming certified in this program;

(2) how to apply for certification and recertification; (3) how the certifications will be issued, renewed, and rescinded; and (4) how to appeal a decision by the Department. Parameters are also included for recognizing equivalent certifications that are issued by other public agencies.

Publication Date: February 9, 2007
Effective Date: February 9, 2007
Expiration Date: See Section 5 (1) (b) 2005 Wis. Act 358
Hearing Date: March 30, 2007

2. Rules adopted creating **ch. Comm 135**, relating to tax credits and exemptions for internet equipment used in the broadband market.

Exemption From Finding of Emergency

These rules establish the criteria for administering a program that will (1) certify businesses as temporarily eligible for tax credits and exemptions for Internet equipment used in the broadband market, and (2) allocate up to \$7,500,000 to these businesses for these tax credits and exemptions.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 17 (1) (d) of 2005 Wisconsin Act 479, this rule will remain in effect until January 1, 2008, or until the Department reports its certifications and determinations under this rule to the Department of Revenue, whichever is sooner.

The rules specify who is eligible for the income and franchise tax credits and the sales and use tax exemptions in this program, for Internet equipment used in the broadband market. Eligible equipment is also specified, along with how to apply for the certifications and allocations. Parameters for allocating the authorized total of \$7,500,000 are likewise specified. These parameters emphasize (1) efficiently initiating broadband Internet service in areas of Wisconsin that otherwise are not expected to soon receive this service, and (2) encouraging economic or community development. The rule chapter also describes the time-specific legislative oversight that is established in 2005 Act 479 for these allocations, and describes the follow-up reports that the Act requires from every person who receives a sales or use tax exemption under this chapter.

Publication Date: February 20, 2007
Effective Date: February 20, 2007
Expiration Date: See section 17 (1) (d) 2005 Wis. Act 479
Hearing Date: March 26, 2007

Dentistry Examining Board

Rules were adopted amending **ch. DE 11**, relating to better identifying the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia, and the requirements for each level.

Finding of Emergency

The board finds that failure to delay the effective date of CR04–095, from January 1, 2007, to July 1, 2007, will create a danger to the public health, safety and welfare. The extra six months are needed to allow the implementation of the rule to

occur and to ensure the continued use of conscious sedation for dental patients.

Publication Date: December 21, 2006
Effective Date: December 29, 2006
Expiration Date: May 28, 2007
Hearing Date: January 31, 2007

Health and Family Services (Community Services, Chs. HFS 30—)

Rules adopted revising **ch. HFS 51**, relating to the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoption, and adoptions of children with special needs and affecting small businesses.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

On April 10, 2006, the Wisconsin State Legislature enacted 2005 Wisconsin Act 293, which amended s. 48.84, Stats., to require first-time adoptive parents to receive preadoption training before a child may be placed for adoption by a court pursuant to s. 48.833, Stats., or before a prospective adoptive parent may petition for placement of a child for adoption under s. 48.837, Stats., or before a proposed adoptive parent may bring a child into Wisconsin for an international adoption under s. 48.839, Stats. The Act further requires the Department to promulgate rules that establish the number of hours and topics covered in the training of first-time adoptive parents. The training must cover issues that may confront adoptive parents in general and that may confront adoptive parents of special needs or international children.

The Act requires the rules to be effective April 1, 2007. Because the rules apply not only to the Department which administers the special needs adoption program with the assistance of private agencies under contract with the Department, and with the cooperation of county human and social service agencies, but also to private agencies that handle domestic adoptions and international adoptions, the Department has invested a significant amount of time gathering information from agencies regarding what training is currently provided to preadoptive parents. The Department conducted written and follow-up telephone surveys with private agencies to determine what content was currently being taught, and the format used for training. The Department's Adoption Services Committee met over several months to determine the curriculum for special needs adoption, the competencies that would be required for all training programs, the number of hours and the documentation that would be required in the training. In addition, the Department reviewed the proposed Hague Convention (federal) training requirements for proposed adoptive parents of international children to assure that Wisconsin's training requirements for first-time pre-adoptive parents would meet or exceed those requirements.

As a result of this extensive collaboration with stakeholders, development of the proposed training requirements has been unusually long and now requires the training requirements to be implemented as an emergency rule in order to meet the legislated date of April 1, 2007, the date adoptive parents must begin receiving preadoptive training.

This emergency rules are substantially similar to the proposed permanent rules except in the hours of training required. Under the emergency order, adoption agencies are required to provide adoptive parents with 2 hours of orientation and 10 hours of training. The proposed permanent rule requires adoption agencies to provide 2 hours of orientation and 16 hours of training. Stakeholder agencies have indicated that the additional 5 months under the emergency rule will allow them to prepare all proposed adoptive parents to meet the orientation and training requirements under the proposed permanent rules.

Publication Date: March 31, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007
Hearing Date: April 27, 2007
 [See Notice this Register]

Insurance (2)

1. Rules adopted creating ss. **Ins 9.25 (8) and 9.27 (4)**, Wis. Adm. Code, relating to preferred provider plan applicability dates and affecting small business plan limited exemption.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The rule identifies a limited group of policies issued by licensed insurers offering preferred provider plans that do not comply with newly promulgated ch. Ins 9, Wis. Adm. Code. In compliance with the request of the Joint Committee for the Review of Administrative Rules (JCRAR), this rule must be issued as an emergency rule and permanent rule. It is not possible to complete the permanent rule process prior to the effective date of the chapter, January 1, 2007, therefore this emergency rule is necessary.

The commissioner has filed a notice of scope for drafting the permanent rule corresponding to this emergency rule and will continue with the permanent rule making process. It is intended that one rule hearing can be held to comply with both the emergency rule and permanent rule requirements.

Publication Date: August 31, 2006
Effective Date: September 1, 2006
Expiration Date: January 29, 2007
Hearing Date: December 12, 2006
Extension Through: May 1, 2007

2. Rules adopted revising s. **Ins 6.77**, relating to underinsured and uninsured motorist coverage in umbrella and commercial policies.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes will modify the rule in light of the recent Supreme Court decisions, *Rebernick v American Family Mutual Ins Company*, 2006 WI 27 and *Rocker v USAA*

Casualty Ins Company, 2006 WI 26. In *Rebernick*, the court held that s. 632.32 (4m), Stats, applies to personal umbrella policies. In *Rocker*, the court held that s. 632.32 (6) (a), Stats, applies to commercial general liability policies and commercial umbrella policies. These interpretations are inconsistent with current insurer practices and OCI's expectation of what would be covered in these types of policies.

Compliance with this interpretation would create significant, if not impossible compliance problems for insurers. Many insurers who write umbrella coverage do not write and are not even licensed to write automobile coverage. A second, difficult issue is that the limits for umbrella coverages are generally very high, \$1,000,000. It is unclear how an umbrella policy would reconcile these limits with the underlying auto policy and underinsured motorist coverage. For this reason, OCI had previously by rule exempted umbrella policies from the similar requirements of the uninsured motorist coverages in s. 632.32, Stats. For similar reasons, the same revision is being made for commercial liability policies.

Publication Date: September 29, 2006
Effective Date: September 29, 2006
Expiration Date: February 26, 2007
Hearing Date: December 11, 2006

Natural Resources (2) (Fish and Game, etc., Chs. NR 1—)

1. Rules adopted amending s. **NR 1.21** and creating s. **NR 1.26**, relating to contracting for timber sale establishment services on state land.

Exemption from finding of emergency

As provided in section 13 of 2005 Wis. Act 166, "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection."

Section 1 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services, including prequalification of bidders based on experience with timber sales and related forest inventory work. Section 2 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

2. Rules adopted creating s. **NR 45.075**, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Exemption from finding of emergency

As provided in section 13 of 2005 Wis. Act 166, notwithstanding s. 227.24, Stats., the Department is not required to provide a finding of emergency for this rule and the emergency rule will remain in effect until a permanent rule is promulgated.

Rule FR–11–07(E) specifies those emergencies on forested land under the jurisdiction of the department over which the chief state forester shall have management authority. This rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency and assume management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease, and damage to timber from fire, snow, hail, ice, or wind. The rule states that when declaring and responding to an emergency, the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that were the most appropriate response to the emergency. Finally, this rule describes the processes by which the declaration of the state of emergency shall be made effective, canceled or modified.

Publication Date: February 6, 2007

Effective Date: February 6, 2007

Expiration Date: July 6, 2007

Hearing Date: March 21, 2007

Optometry Examining Board

A rule was adopted creating **ch. Opt 8**, relating to continuing education.

Exemption from finding of emergency

2005 Wisconsin Act 297 section 58 states in part:

“(3) Continuing education rules. (b) ...Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the optometry examining board is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.”

Plain language analysis

Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrist will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

Publication Date: November 8, 2006

Effective Date: November 8, 2006

Expiration Date: April 7, 2007

Hearing Date: December 7, 2006

Extension Through: June 5, 2007

Regulation and Licensing

Rules adopted creating **chs. RL 160 to 168**, relating to substance abuse professionals.

Exemption from finding of emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: “Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Plain language analysis

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval and professional liability insurance for substance abuse professionals.

Publication Date: November 27, 2006

Effective Date: December 1, 2006

Expiration Date: April 30, 2007

Hearing Date: February 13, 2007

Transportation

Rules adopted revising **ch. Trans 276**, relating to allowing the operation of certain 2–vehicle combinations on certain highways without a permit.

Exemption from finding of emergency

The Legislature, by Section 7 of 2005 Wis. Act 363, provides an exemption from a finding of emergency for the adoption of the rule.

Plain language analysis

Section 348.07 (1), Stats., historically has limited vehicle lengths on Wisconsin highways to 65 feet. Section 348.07(2), Stats., allowed vehicles meeting the specifications of that subsection to operate without permits despite exceeding the 65–foot limit of subsection (1).

2005 Wis. Act 363 amended s. 348.07, Stats., and essentially made 75 feet the default permitted length on the state trunk highway system. Wisconsin’s old default 65–foot overall length limit still applies on all local roads but only applies to state trunk highways that are designated as 65–foot restricted routes by the Department. This emergency rule making establishes a preliminary list of such “65–foot restricted routes.”

Prior to Act 363, s. 348.07 (4), Stats., permitted the Department to designate “long truck routes” upon which no overall length limits apply. The Department designates the state’s long truck routes in s. Trans 276.07. This rule making does not affect those longstanding designations.

The new “default” 75–foot overall length limit applies on state highways that are neither designated as 65–foot restricted routes under this rule making nor long truck routes under s. Trans 276.07.

Definitions have been added to the rule to make it easier to identify the nature of designations made by the Department in Ch. Trans 276.

In drafting this rule the Department noticed several items that it believes may be of special interest to the legislature and which, in the Department's view, deserve special legislative attention. First, Act 363 did not grant any authority for 75-foot vehicles using the new 75-foot routes to leave those routes to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly facilities or points of loading or unloading. The Department does not believe this oversight was intentional and, on an emergency basis, has designated the intersection of each 75-foot route and any other highway as a long truck route under its authority in s. 348.07 (4), Stats. This will permit trucks to exceed the 65-foot default length limit on local roads to access such facilities and make deliveries. The Department encourages the legislature to consider statutorily establishing access rights for vehicles using 75-foot restricted routes.

The second consequence of Act 363 the Department has discovered in drafting this emergency rule is that one statute that formerly restricted double-bottom tractor-trailer combinations to the state's long-truck network was repealed by the deletion of the reference to s. 348.07 (2) (gm), Stats., by the Act's amendment of s. 348.07 (4), Stats. Under the amended statute, as revised by Act 363, it might appear to a reader that double bottom trucks of unlimited length may operate upon any highway in the state, including local roads and streets, without permits. Section 348.08 (1) (e), Stats., however, continues to provide that double-bottom trucks be restricted to highways designated by the department under s. 348.07 (4). WisDOT believes this provision continues to limit double-bottom operation to long truck routes designated by the Department under s. 348.07 (4), Stats. WisDOT would suggest the deleted reference to (2) (gm) in 348.07 (4), Stats., be re-inserted into the statute to avoid confusion.

Finally, the Department notes that s. 348.07, Stats., is becoming difficult to decipher from a legal standpoint because of the many amendments that have been made to it over the years. It may be that recodifying the statute for the purpose of clarification of the length limitations of Wisconsin law would be helpful to truck and long vehicle operators in this state.

Publication Date: September 15, 2006
Effective Date: September 15, 2006
Expiration Date: See section 7 (2) of 2005 Wis. Act 363
Hearing Date: October 4, 2006

Workforce Development (2) **(Workforce Solutions, Chs. DWD 11 to 59)**

1. Rules adopted revising s. DWD 56.06, relating to child care rates and affecting small businesses.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The child care subsidy budget estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06–07. This is due to flat federal funding, rising caseload, and increased provider costs. To begin to address

the tight budget, the Department will not increase the child care subsidy maximum rates for 2007. This emergency rule will maintain the maximum rates at 2006 levels.

Publication Date: January 22, 2007
Effective Date: January 22, 2007
Expiration Date: June 21, 2007
Hearing Date: May 7, 2007
[See Notice this Register]

2. Rules adopted revising ch. DWD 56, relating to child care enrollment underutilization.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The child care subsidy budget is expected to have a substantial deficit by the end of state fiscal year 2006–07. While many factors will have an impact on the program's final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06–07 budget authorization by approximately \$46 million. This rule will provide for more efficient use of the program's limited funding.

Publication Date: April 1, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007

Workforce Development **(Public Works Compensation, Chs. DWD** **290–294)**

Rules adopted amending s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

Publication Date: December 28, 2006
Effective Date: January 1, 2007
Expiration Date: May 31, 2007
Hearing Date: February 19, 2007

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Certification of Firewood Dealers (Pest Control).

Objective of the rule. Create a voluntary DATCP certification program for firewood dealers. Certification will allow dealers to supply Wisconsin grown and cut firewood to Wisconsin state parks. DNR rules under s. NR 45.04 (1) (g) prohibit firewood from entering state parks from more than 50 miles away, unless the firewood comes from a DATCP–certified source.

Limit the risk of the human–caused spread of Emerald Ash Borer and other plant pests that are carried on firewood.

Policy Analysis

DATCP administers laws related to the control of plant pests. DATCP has authority under s. 93.06 (1p), Stats. to provide inspection and testing services related to all DATCP programs. DATCP has authority under s. 93.07 (12), Stats. to conduct surveys and inspections for the detection and control of pests injurious to plants, and to make, modify, and enforce reasonable rules needed to prevent the dissemination of pests. DATCP also has plant inspection and pest control authority under s. 94.01, Stats. DATCP may by rule impose restrictions on the importation or movement of serious plant pests, or items that may spread serious plant pests.

The Emerald Ash Borer, *Agrilus planipennis*, is a very serious plant pest risk that has destroyed large numbers of ash trees in neighboring Midwestern states. The Emerald Ash Borer is an exotic pest that endangers Wisconsin's 717 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, including up to 20% of Wisconsin's urban street trees and residential landscaping trees, and can result in substantial losses to forest ecosystems. The insect can cause great harm to state lands, and to the state's tourism and timber industries.

Human movement of infested firewood is the primary means of spread of the Emerald Ash Borer and other plant pests. Firewood can be processed or treated to mitigate the spread of pests.

DNR rule s. NR 45.04 (1) (g) prohibits imports of firewood to a Wisconsin state park from any location outside this state. It also prohibits firewood from any location within the state that is more than 50 miles from the state park, except from sources approved by DATCP.

This rule would create a voluntary certification program for firewood dealers that will allow certified dealers to continue supplying Wisconsin grown and cut firewood into state parks. Certified dealers must implement control measures to ensure that firewood is free of pests. This rule will spell out certification criteria, including required pest control measures.

The certification program would be open to all firewood dealers in the state, regardless of whether they supply firewood to Wisconsin state parks. Certification would be voluntary, and would not be required in order to sell firewood in this state (except to state parks located more than 50 miles away from the dealer). Certification would not change

current rules related to firewood imports from other states. Certification would not authorize out–of–state firewood in Wisconsin state parks.

Comparison with Federal Regulations

In order to limit the spread of Emerald Ash Borer, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA–APHIS) has imposed quarantines on the movement of ash wood from Illinois, Indiana, Ohio and the Lower Peninsula of Michigan. DATCP rules currently prohibit imports from any federally quarantined area, except under authorized conditions. This proposed rule is consistent with current state and federal rules.

Entities Affected by the Rule

The certification program under this rule would be entirely voluntary. This rule will benefit some Wisconsin firewood dealers who would otherwise be prohibited from supplying firewood to Wisconsin state parks.

Policy Alternatives

If DATCP does nothing, firewood suppliers will be prohibited under s. NR 45.04 (1) (g) from supplying firewood to a state park more than 50 miles from the source of the firewood.

Statutory Authority

Sections 93.06 (1p), 93.07 (12), and 94.01, Stats.

Statutory Alternatives

None at this time.

Staff Time Required

DATCP estimates that it will use approximately 0.1 FTE staff time to develop these rules. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

DATCP Board Authorization

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the board, the scope statement is considered approved. Before the department holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before the department adopts the permanent rule.

Natural Resources

Subject

Revise Wisconsin Administrative Code ch. NR 345, relating to dredging in navigable waterways to create a general permit for dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove algae, mussels, dead fish and similar large public nuisance deposits.

Policy Analysis

From 1965 to 1997, water levels in the Great Lakes were at or above their long–term average. However, from

1998–2000 water levels dropped significantly to around 3 feet below their long–term average. While no longer dropping as sharply as they did from 1998–2000, water levels have continued to stay below their long–term averages. Presently 2006 water levels are below water levels of the year 2005 and the National Oceanic and Atmospheric Administration (NOAA) long–range forecast for 2007 indicates more of the same. Specifically for the Great Lakes that border Wisconsin, Lake Michigan is 17 inches below its long–term average and Lake Superior is within 2 inches of its all time low.

In addition to low water levels, increased populations of invasive species such as Zebra mussels, Quagga mussels, and blooms of the nuisance algae *Cladophora*, have continued to plague the Great Lakes. Lower water levels contribute to a greater exposed beach area, and, as a result, mussel shells and large floating mats of algae often get deposited by wave action in large quantities along the lakeshore. The beached algal mats mixed with decaying zebra mussels and other invertebrates and fish result in unsightly, malodorous conditions. Piles of decaying *Cladophora* may affect tourism and recreation and owner property values, have been linked to taste and odor problems in drinking water, and may exacerbate levels of *E. coli* and bacteria in beach sand and swimming waters, thus raising questions about beach safety. In Wisconsin, these nuisance conditions have been reported at many sites ranging from northeastern Green Bay and the tip of Door County to Kenosha. (UW Sea Grant 2005)

The biomass of *Cladophora* that washes ashore varies between years and locations. Mats of stranded algae two feet thick may collect in some areas– often embayments where waters are calmer and materials tend to collect (Whitman et al. 2003). In 2004, twenty five tons of *Cladophora* were removed from Milwaukee’s lakeshore alone (Stauffer 2004). In other areas, accumulations are less where the decaying algae may remain offshore or confined to the swash zone (Harris 2004).

Waterfront property owners desire to remove these cathodic protection tester periodically inspect all cathodic protection systems for these tanks and piping. Section 12 of 40CFR280 establishes definitions for corrosion expert and cathodic protection tester. Those definitions require corrosion experts to be accredited professionals, and require cathodic protection testers to meet specified criteria for education and experience. The proposed rules are expected to incorporate these requirements and definitions into chapter Comm 5.

The mechanical removal of large algal accumulations has been accomplished with front–end loaders, backhoes or beach grooming equipment. However, monitoring of indicator bacteria in beach sand has shown that heavy equipment may grind decaying algae into moist sand creating conditions that promote higher bacterial growth (Harris 2004). In addition, precautions must be taken to avoid damaging sensitive beach vegetation and near shore habitat for fish and wildlife. There are currently no state guidelines for *Cladophora* removal. By promulgating a General Permit with standards for mechanized removal that include location standards (where on the shoreline can the activity take place), substrate restrictions (limits on the volume of sand vs. cobble that can be removed incidentally), area standards (how much material can be removed), types of mechanized methods allowed, and guidance on what to do with the removed material, among other things, we will be able to ensure that sensitive beach vegetation and near shore habitat impacts are avoided and that these activities are not inadvertently promoting bacterial growth.

The operation of motor vehicles and the removal or disturbance of materials on the beds of navigable waterways (also know as dredging) is regulated by Wis. Stats. Chapter 30 and Wisconsin Administrative Code Chapter NR 345. The statutes and current rule allows lakefront property owners to apply for an individual permit to use mechanized methods to remove “public nuisance deposits.” However, individual permits require a \$500 application fee and a 30 day public comment period before the permit can be issued.

Considering the changing lakeshore due to decreased water levels and the abundance of invasive species, the Department proposes to revise ch. NR 345 to create a general permit. The general permit would permit lakefront property owners to remove public nuisance deposits (*Cladophora*, Zebra mussels, dead fish, etc.) on the beds of “outlying” navigable waters (as defined in s. 29.001 (63), Stats.) more efficiently while complying with general permit conditions created to protect the public interest in the lakebed. The general permit has a \$50 application fee and is processed in 30 days. A permanent rule will be developed.

References

Harris, Vicki. 2004. “*Cladophora* Confounds Coastal Communities –Public Perceptions and Management Dilemmas” in *Cladophora* Research and Management in the Great Lakes Proceedings of a Workshop Held at the Great Lakes WATER Institute, University of Wisconsin–Milwaukee, December 8, 2004

This rule change will allow the department to issue turkey tags remaining after the initial drawing in accordance with state statute, which is first–come, first–served. Additionally, this rule updates code language to accurately describe how permits are currently issued (by zone and by time period) and establishes that no person may obtain more than one turkey carcass tag per day.

UW Sea Grant. 2005. “Nuisance Algae on Lake Michigan Shores”

Whitman, Richard L, Dawn A. Shively, Heather Pawlik, Meredith B. Nevers, and Muruleedhara N. Byappanahalli. 2003. “Occurrence of *Escherichia coli* and *Enterococci* in *Cladophora* (Chlorophyta) in Nearshore Water and Beach Sand of Lake Michigan”. *Applied and Environmental Microbiology* 69(8): 4714–4719

Statutory Authority

Section 30.20, Stats.

Staff Time Required

Department staff will need approximately 200 hours for this rule revision, including both the emergency order and permanent rule process.

Comparison with Federal Regulations

There are no federal regulations on this issue.

Entities Affected by the Rule

Affected parties include riparian owners along the shores of “outlying waters” (as defined in s. 29.001 (63), Stats.), aquatic invasive species managers, NRCS and other agencies or contractors who remove invasive and unwanted aquatic plants and dead animals from shoreline areas.

Summary and Preliminary Comparison with Existing or Proposed Federal Regulations

There are no federal regulations on this issue.

Name, Address, Telephone Number and E–Mail Address of Agency Contact

Martin (Martye) Griffin

Wisconsin Department of Natural Resources

101 S. Webster Street, WT/4
Madison, WI 53707
MartinP.Griffin@wisconsin.gov
ph. 608.266.2997
fax. 608.266.2244

Transportation

Subject

Objective of the rule. Ch. Trans 117, Stats., administratively interprets and explains the Department's occupational licensing program. Section Trans 117.025 explains the procedure by which occupational licensing decisions are made. Section Trans 117.03 explains the various tests used by the Department in determining eligibility for occupational licensing and grounds for restricting occupational licenses.

Policy Analysis

A recent Waukesha County case involving a repeat drunk driver who sought an occupational license during the

minimum mandatory waiting period for a license specified in s. 343.30 (1q) (a) 4. made the Department aware of the fact that the administrative rule does not discuss statutory minimum waiting periods for licensing. The proceeding illustrated a need to explain the Department's procedures with regard to application of the minimum waits for occupational licensing in the administrative rule.

Comparison with Federal Regulations

No federal regulation applies to this case.

Entities Affected by the Rule

This proposed rule making would not change any law or procedure of the Department of Transportation. It would essentially repeat the statutory provisions that require drivers wait minimum periods of time before being eligible for occupational licensing, and clarify that the Department applies those statutory requirements in making occupational license decisions.

Statutory Authority

Section 343.10, Stats.

Staff Time Required

4 hours.

Submittal of rules to legislative council clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Commerce

On March 30, 2007 the Department of Commerce submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules affect chs. Comm 2, 10, 14, 47 and 48, relating to flammable, combustible and hazardous liquids.

Agency Procedure for Promulgation

The Environmental and Regulatory Services Division is responsible for the promulgation of rules. A public hearing is required and will be held on April 30, May 2 and 3, 2007.

Contact Person

Sheldon Schall, Section Chief
(608) 266–0956
sschall@commerce.state.wi.us

Madison, Wisconsin 53708–8916
(608) 266–3595
Fax (608) 264–6750
langedw@dhfs.state.wi.us

For small business considerations and rules processing information contact:

Rosie Greer
608–266–1279
greerrj@dhfs.state.wi.us

Health and Family Services

Analysis

Subject: To revise ch. HFS 51, relating to adoption of children, to include preadoption training for first–time adoptive parents in private adoptions, international adoptions, and adoptions of children with special needs as required under s. 48.84, Stats., created by 2005 Wisconsin Act 293, effective April 1, 2007.

Federal statutes or regulations which require adoption of or are relevant to the substance of proposed rules: None known.

Court decisions directly relevant to the proposed rule: None known.

Agency Procedure for Promulgation

The Department will be holding public hearings as follows:

April 27, 2007

8:00 a.m. – 12:00 p.m.

Department of Health and Family Services
1 W. Wilson St.
Room 751
Madison, WI 53703

April 27, 2007

8:00 a.m. – 12:00 p.m.

Public hearing available by webcast at:
<http://media1.wi.gov/DHFS/Viewer/?peid=fbce571a-fbd-c-4e1a-bfec-2daf83eabd77>

Contact Person

Dale Langer
Manager, Adoption and Consultation Section
Division of Children and Family Services
P.O. Box 8916

Revenue

On March 21, 2007 the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends s. Tax 1.12, relating to electronic funds transfer.

Agency Procedure for Promulgation

A public hearing on the proposed rule will be scheduled.

The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

Contact Person

If you have questions, please contact:
Dale Kleven
Income, Sales and Excise Tax Division
Telephone (608) 266–8253
E–mail: dkleven@dor.state.wi.us

Workforce Development

On April 2, 2007 the Department of workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 49.155 and 227.11 (2) (a), stats.

The proposed rules affect ch. DWD 56, relating to child care rates and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 7, 2007.

The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Workforce Solutions.

Contact Person

Elaine Pridgen
Telephone (608) 267–9403
Email: elaine.pridgen@dwd.state.wi.us

Rule–making notices

Notice of Hearings

Commerce

[CR 07–029]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.09 (3), 101.11, 101.14 (4) (a), 101.19, and 168.16 (4) of the *Wisconsin Statutes*, the Department of Commerce will hold public hearings on proposed rules under chapters Comm 2, 10, 14, 47 and 48, of the *Wisconsin Administrative Code*, relating to flammable, combustible and hazardous liquids.

The public hearings will be held as follows:

<u>Date & Time:</u>	<u>Location:</u>
Monday April 30, 2007 1:00 p.m.	Thompson Commerce Center, Third Floor, Room 3B 201 West Washington Avenue Madison, Wisconsin
Wednesday May 2, 2007 1:00 p.m.	Eau Claire State Office Bldg Rm 105 718 West Clairemont Avenue Eau Claire, Wisconsin
Thursday May 3, 2007 9:00 a.m.	Green Bay State Office Building, Room 152A 200 North Jefferson Street Green Bay, Wisconsin

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until May 10, 2007, to permit submittal of written comments from persons who are unable to attend the hearings or who wish to supplement testimony offered at the hearings. All written comments should be submitted by e–mail to srockweiler@commerce.state.wi.us. If e–mail submittal is not possible, written comments may be mailed to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

These hearings will be held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearings, please call Sam Rockweiler at (608) 266–0797 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis

1. Statutes Interpreted. Sections 101.09 (3), 101.11 (2), 101.14 (4) (a) and (g), 101.142, 101.19, 168.11 (1) (b) 1., and 168.16 (1) of the Statutes.

2. Statutory Authority. Sections 101.09 (3), 101.11, 101.14 (4) (a), 101.19, and 168.16 (4) of the Statutes.

3. Explanation of Agency Authority. Under the statutes listed above, the Department has a responsibility to adopt and administer rules for safe storage, handling and use of flammable, combustible and hazardous liquids. The rules proposed in this order encompass fire safety, life safety and environmental safety aspects for flammable and combustible liquids and incorporate registration requirements for tanks that contain federally regulated hazardous substances.

4. Related Statute or Rule. The rules proposed in this order are related to rules in chapter Comm 14, which addresses fire prevention; chapter Comm 47, which addresses Petroleum Environmental Cleanup Fund Awards (PECFA); chapter Comm 48, which addresses grade specifications and inspection requirements for petroleum products; and chapters Comm 61 to 65, which address design and construction of public buildings and places of employment.

5. Plain Language Analysis. The rules contained in this proposal are primarily intended to establish design, construction, operation and maintenance standards for public safety, and to protect the waters of the state from contamination by liquids that are flammable or combustible or are federally–regulated hazardous substances. Many of the changes from the current code requirements are intended to update adopted national standards, address advances in technology, remove obsolete deadline requirements, and streamline administrative processes. Some of the changes are designed to address current trends and practices, emphasize life safety requirements, clarify ambiguous requirements, and provide consumer protection. The changes would also allow certain types of fueling from movable tanks, which is generally prohibited under the current code and its adopted standards. Wherever possible, conflicting rules in chapter Comm 10 would be repealed so that the requirements will be as specified in the adopted, current national standards. Consent to adopting all new or updated standards will be obtained from the Attorney General and the Revisor of Statutes prior to incorporating the standards into the rules. New requirements have been added to focus environmental protection on the components of a tank system that have been shown to have the greatest potential for releases to the environment. Requirements have also been added to maintain consistency for re–commissioning of out–of–service corrosion protection systems.

The proposed rules would also transfer regulation of small containers for flammable, combustible and hazardous liquids, and regulation of certain process containers for these liquids, from chapter Comm 10 to chapter Comm 14. This change would expand the scope of Comm 14 to include nearly all of the tanks and other containers which are being excluded from Comm 10 and which involve storage, transfer or dispensing of flammable, combustible or hazardous liquids. Although Comm 14 currently applies only to public buildings and places of employment, the expanded scope would extend beyond that limit because Comm 10 likewise now extends beyond that limit. However, this expanded scope would not extend to Indian reservation land, or to facilities that are either leased to the federal government or exempted by federal statutes or treaties. The expanded scope would also apply retroactively to any of these containers that exist on the effective date of this rule change, because Comm 14 otherwise now applies retroactively to existing conditions.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations. Federal regulations for aboveground storage tanks do not address fire and public safety issues or ground water pollution issues. Federal regulations for underground storage tanks do not address fire and public safety issues or surface water pollution issues. A summary and a comparison of the federal regulations that do address topics in chapter Comm 10 are included in the following comparison with rules in adjacent states.

7. Comparison With Rules in Adjacent States. Administrative – In Illinois and Minnesota, as in Wisconsin, ordinances or standards that are adopted locally can be more restrictive than the state rules. In Michigan, no municipality or fire protection district can be more restrictive than the state rules. Iowa allows municipal or fire protection district requirements to be more restrictive for aboveground storage tank applications, however, they cannot be more or less restrictive for underground storage tank applications.

Topical requirements. The following eight topics illustrate the most significant proposed changes to the current requirements in chapter Comm 10. A comparison of these proposed changes with federal regulations and with rules in adjacent states also follows.

A. Comm 10.100 (1) (a) 8. and 10.680 (3) (a) These sections would more specifically require plan review for new fueling systems using fuels with greater than 10 percent ethanol, and for converting an existing fueling system using fuels with less than 10 percent ethanol to a fueling system using up to 100 percent ethanol. These sections would also more specifically require cleaning of a tank during conversion of an existing system. The plan review requirement would also apply to new fueling systems using fuels with greater than 5 percent biodiesel, and to conversion of an existing system using fuels with less than 5 percent biodiesel to a fueling system using up to 100 percent biodiesel. The Department is currently requiring this plan review and tank cleaning through general criteria in chapter Comm 10.

A search of existing and proposed federal regulations, and existing rules in the adjacent states identified only Illinois as having a requirement for plan review for conversion of existing systems for both aboveground and underground storage systems. Michigan does not review changes to existing systems unless more than half of the system is changed – however, some local jurisdictions are more restrictive and may require a review. Iowa requires review for a conversion of an existing underground system only. Minnesota defers approval to the local jurisdiction, however the Minnesota Weights and Measures program has authority to mandate changes that they believe impact consumer protection.

These proposed rule changes are needed to ensure that components used in a storage tank system are compatible with the increased ethanol content of these alternative motor fuels. Incompatibility could result in fuel contamination from these components, and could cause these components to fail and thereby result in a release to the environment. Not removing water and residues from a tank before it is filled with fuel having more than 10 percent ethanol can result in formation of compounds that subsequently cause engine malfunctions.

B. Comm 10.400 (3) and Comm 10.500 (1) and (5) These sections would expand current requirements for providing double–wall piping and tanks, to apply to all new underground tanks and pressurized piping, including underground piping that serves an aboveground tank. These requirements would also apply when replacing more than half of an existing single–wall underground piping system. This expansion is in response to the federal Energy Policy Act of

2005, which (1) addresses secondary containment for federally regulated tanks or piping installed within 1,000 feet of any existing community water system, or any existing potable drinking water well or other potable water source, and (2) requires interstitial monitoring for any associated double–wall tanks or piping.

Note: Complaint forms are available from the Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department’s website at: <http://drl.wi.gov>.

These new requirements are justified considering that the results of a study sponsored by the US Environmental Protection Agency indicate that piping failures cause over 17 percent of all environmental releases associated with storage tanks, piping and dispensers. These proposed rule changes would reduce environmental contamination from undetected piping failures, while at the same time satisfying the new federal regulations in the Energy Policy Act. Michigan, Illinois, Iowa and Minnesota will be modifying their rules, where needed, to include these same requirements (double–wall tank and piping for new and replacement systems) to satisfy the new federal regulations, which became effective on February 8, 2007.

C. Comm 10.400 (3), 10.500 (5) and Comm 10.615 (5) These sections would newly require liquid–tight containment sumps under and around all existing and new buried piping connections – including connections at fueling dispensers, transition sumps, and submersible pumps for tanks. A five–year period is proposed for upgrading existing equipment to meet this requirement. This requirement is in response to the federal Energy Policy Act of 2005.

Michigan has required installation of containment sumps since the early 1990’s. Illinois requires installation of containment sumps when new piping systems are installed or when underground piping is replaced. Minnesota requires installation of containment sumps when new piping systems are installed. Iowa does not have any specific rule for containment sump installation, but is currently evaluating a rule revision that includes this requirement.

This requirement is necessary considering that the results of a study sponsored by the US Environmental Protection Agency indicate that over 34 percent of releases from components for underground storage tank systems occur where connections are made in piping and at dispensers. Because of widespread improvement in otherwise reducing leaks from tanks and piping, these connections are now the single–most susceptible portion of a tank and piping system, for having releases or spillage, other than at the spill buckets that are used during fuel deliveries. Site review staff in the Division’s PECFA program believe that contamination levels which are increasing at current remediation sites or which are appearing in post–remediation monitoring at other sites is the result of migration of under–the–dispenser contamination. Installing containment sumps will allow for detection of leaks, and repair of piping– or component–connection failures before a significant environmental release occurs. These installations will also achieve compliance with the federal regulations in the 2005 Energy Policy Act that became effective on February 8, 2007. Michigan, Illinois, Iowa and Minnesota are expected to soon adopt these same requirements, to satisfy the new federal regulations.

D. Comm 10.410 This section would specifically require an overfill alarm when filling reaches 90 percent of full, and an automatic shutoff at 95 percent, for aboveground storage tanks that are not located within a dike.

These requirements are currently included indirectly in Comm 10, through adoption of an NFPA 30 standard.

However, they have often been overlooked, so they are now being emphasized by inclusion directly in Comm 10.

During tank filling, federal spill prevention, control and countermeasure regulations (40 CFR 112) require high–liquid–level alarms, with an audible or visual signal at a constantly attended operation or surveillance station. These federal regulations also require high–liquid–level, pump–cutoff devices that are set to stop flow at a predetermined container–content level. Michigan, Minnesota and Iowa have overfill–protection requirements for any tank not located within a dike, which are substantially the same as the federal regulations and these proposed Comm 10 requirements. Illinois does not have overfill–equipment requirements for aboveground storage tanks – however, during loading and unloading of tank trucks and tank wagons, a person must be present and in charge at all times, and overfill protection may be required by a local municipality or fire protection district.

These requirements are justified considering that the results of a study sponsored by the US Environmental Protection Agency indicate that over 23 percent of releases from shop–fabricated aboveground storage tanks are caused by overfills, and the majority of tanks in service are shop–fabricated. Emphasis on preventing overfills is necessary not only for protection of the environment but also for fire safety.

E. Comm 10.505 This section would specifically require an overfill alarm or flow restriction when filling reaches 90 percent of full, and an automatic shutoff at 95 percent, for underground storage tanks.

These requirements are currently included indirectly in Comm 10, through adoption of an NFPA 30 standard. However, they have often been overlooked, so they are now being emphasized by inclusion directly in Comm 10.

Federal regulations only require the owner or operator to (1) ensure that before a tank is filled, the volume available in the tank is greater than the volume of the product to be transferred to the tank; and (2) ensure that the transfer operation is constantly monitored. Michigan, Minnesota, Illinois and Iowa have overfill protection requirements for underground storage tanks, that are substantially the same as these proposed Comm 10 requirements.

These requirements are justified considering that the results of a study sponsored by the US Environmental Protection Agency indicate that over 19 percent of underground storage tank releases are caused by spill/overfill incidents. However, the most significant justification for dual overfill protection is that several major catastrophic incidents have occurred during the past few years because of failure of a single overfill method. In one situation, two occupants of a car were killed when an overfill resulted in flowing fuel that ignited and impinged on the vehicle. Emphasis on preventing overfills is necessary not only for fire safety but also for protection of the environment.

F. Comm 10.515 (8) This section would specifically require annual testing of leak detection equipment. This change is primarily for clarification purposes and would better express the intent of the current requirements. Michigan, Illinois, Iowa, Minnesota and the federal regulations all require annual testing of leak detection equipment. Under the current rules, there has been some confusion as to what “testing” means; this section would clarify that the test must include an induced leak for a 3.0 gallon–per–hour detection limit.

G. Comm 10.535 This section would change the inspection frequency for an internal lining of an underground storage tank from an initial inspection period of 10 years and

every 5 years thereafter, to an initial inspection period of 5 years and every 5 years thereafter.

Federal regulations have allowed lining of underground storage tanks as one of the upgrade methods during implementation of nationwide corrosion protection for underground tanks, beginning in the late 1980’s. The initial lining inspection after the tank is lined was set at 10 years, to be followed by an inspection frequency of every 5 years thereafter. Michigan, Illinois, Iowa and Minnesota recognize the 10/5–year schedule for existing lined tanks – however, Michigan and Iowa do not allow new tank lining installations. Minnesota, Illinois and this proposed Comm 10 rule will continue to allow interior lining of tanks.

This proposed rule change in the initial internal inspection frequency is needed due to recent, increased evidence that many tank internal linings fail within the first five years of installation and subsequently do not maintain the expected corrosion protection.

H. Comm 10.900 (1) This section would expand current requirements for financial responsibility to apply to aboveground storage tanks, including tank wagons, fuel delivery barges and tanks on non–solid fill piers.

Generally, there are no federal or adjacent–state financial responsibility requirements for aboveground storage tanks. Michigan, Illinois, Iowa and Minnesota do not address use of tank wagons or fuel delivery barges. The national standards adopted in Comm 10 do not recognize, as an acceptable practice, transportation and dispensing by tank wagons or barges.

This requirement is necessary considering that the proposed Comm 10 rule changes recognize and regulate use of tank wagons, barges and tanks on non–solid fill piers. The need for regulation of these types of tanks was determined based on the increasing number of instances, and trends, where these tanks are being used. Due to the increased use and industry practices, the Department believes that the number of releases from these types of tanks may also increase, thereby justifying a financial responsibility requirement for covering the cost of cleaning up a spill to the environment.

8. Summary of Factual Data and Analytical Methodologies

Surveys of Wisconsin mobile air conditioner refrigerant and repairs. The proposed changes to chapter Comm 10 were also developed with assistance from the Department’s advisory committee for flammable, combustible and hazardous liquids. The members of that advisory committee are as follows:

<u>Name</u>	<u>Representing</u>
Randy Sharvey	Wisconsin Fire Inspectors Association
Erin Roth	Wisconsin Petroleum Council
Tim Clay	Wisconsin Federation of Cooperatives
Paul Knower	WI Petroleum Equip. Contractors Assn.
Steve Danner	Wisconsin Aviation Trades Association
Elizabeth Hellman	Wisconsin Utilities Association
Gary Pate	Wisconsin Insurance Alliance
John Reed	WI Airport Management Association
Dale Safer	Wisconsin Innkeepers
Bob Bartlett	WI Petroleum Marketers & Convenience Store Association

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report

The Department derived the cost estimates in the following section from input from contractors.

10. Anticipated Costs Incurred by Private Sector

The following categories for new costs that are anticipated for the private sector correspond to the categories in section 7 above.

B. Comm 10.400 (3) and Comm 10.500 (1) and (5) – Double–wall piping for replacing repaired pipe and for new underground pipe of AST and UST systems: In the short term, the installation of double–wall piping may cost an additional \$4000 for a typical service station. In the long term, reduced insurance premiums may result.

C. Comm 10.400 (3), 10.500 (5) and Comm 10.615 (5) – Liquid–tight sumps under dispensers and around fittings: \$250 per dispenser, and upward to \$4900, depending upon the mechanism used to meet the requirement.

D. Comm 10.410 – AST overflow alarms and auto–shutoff: \$1,000–2,000 (equipment and installation) per tank, depending upon the equipment and mechanism used to meet the requirement, and the size of the tank.

G. Comm 10.535 – Changing the interior–lining inspection from 10 years and every 5 years thereafter, to every 5 years: Two 5–year camera inspections are approximately 7 percent higher than one 10–year entry inspection. However, out–of–service time is considerably less for the camera inspection method.

H. Comm 10.900 (1) – Financial responsibility for ASTs (tank wagons, barges, tanks on non–solid fill piers): Insurance cost varies with jobber and is typically an add–on to existing pollution liability coverage. Annual cost may range from \$800 and upward, depending on the type of system and risk.

11. Effect on Small Business

These proposed rule changes may have an economic effect on any small business with at least one storage tank containing a flammable, combustible or federally–regulated hazardous liquid. This includes any business that sells gasoline or other liquid motor fuel for use in any type of internal combustion engine. These economic effects are not expected to be significant, except as summarized in section 10 above.

12. Agency Contact Information.

13. Place Where Comments Are to Be Submitted, and Deadline for Submission

Comments on the proposed rules may be submitted by e–mail to srockweiler@commerce.state.wi.us, no later than May 10, 2007. If e–mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

The proposed rules and an analysis of the rules are available on the Internet at the Department of Commerce Web site, through the following series of hyperlinks: <http://commerce.wi.gov/>, Petroleum & Tanks, Storage Tank Regulations, and Comm Code Revision Drafts & Info. Paper copies may be obtained without cost from Sheldon Schall at the Department of Commerce, Bureau of Petroleum Products and Tanks, P.O. Box 7837, Madison, WI 53707–7837, or at sschall@commerce.state.wi.us, or at telephone (608) 266–0956 or (608) 264–8777 (TTY). Copies will also be available at the hearings.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. Chapter Comm 1, Environmental Analysis and Review Procedures for Department Actions, classifies this rule in the following

manner: “Establish design, construction, operation and maintenance standards for public safety.” By the very nature of the program, public safety includes keeping flammable, combustible and hazardous liquids out of the waters of the state, as required under s. 101.09, Stats.

In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. Rules proposed under this order are intended to address shortcomings in the current rule that have resulted in releases into the waters of the state and the surrounding region. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

There are no requirements in this proposal that should affect either state or local government costs or revenues.

The anticipated costs that may be incurred by the private sector in complying with new requirements in the proposed rules are adequately described in the rule summary which immediately precedes the proposed rules.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Any business with at least one storage tank containing a flammable, combustible or federally–regulated hazardous liquid will be affected by these rules. This includes any business that sells gasoline or other liquid motor fuel for use in any type of internal combustion engine.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

All record keeping requirements are contained in s. Comm 10.400 (11) for aboveground storage tanks and in s. Comm 10.500 (8) for underground storage tanks. This replaces the current situation where record keeping is handled inconsistently in various areas of the code and associated federal regulations.

3. Types of professional skills necessary for compliance with the rules.

There are no additional professional skills necessary for compliance with these rules.

4. Rules have a significant economic impact on small businesses.

Yes, rules submitted to Small Business Regulatory Review Board.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267–0297, or by e–mail at cdunn@commerce.state.wi.us.

Notice of Hearing Health and Family Services [CR 07–028]

NOTICE IS HEREBY GIVEN that pursuant to s. 48.84, Stats., and interpreting s. 48.84, Stats., Stats., the Wisconsin Department of Health and Family Services will hold a public hearing to consider the emergency rules and the proposed permanent rules amending ch. HFS 51 (title), HFS 51.01, HFS 51.02, and HFS 51.09 (2) (a) 1. and Note; and creating HFS 51.03 (15g), (15r), (18g) and (18r) and HFS 51.10, relating to

the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoptions, and adoptions of children with special needs, and affecting small businesses.

Date and Time and Location

April 27, 2007

8:00 a.m. – 12:00 p.m.

Department of Health and Family Services

1 W. Wilson St.

Room 751

Madison, WI 53703

April 27, 2007

8:00 a.m. – 12:00 p.m.

Public hearing available by webcast at: <http://media1.wi.gov/DHFS/Viewer/?peid=fbce571a-fbdc-4e1a-bfec-2daf83eabd77>

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non-English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Place Where Written Comments May be Submitted

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>.

Deadline for Comment Submission

The deadline for submitting comments to the Department is 4:30 p.m. on April 27, 2007.

Analysis Prepared by the Department of Health and Family Services

Effective April 1, 2007, 2005 Wisconsin Act 293 creates s. 48.84, Stats., to require prospective adoptive parents to receive preadoption preparation (i.e., training) in the following instances:

Before a child may be placed under s. 48.833, Stats., (special needs adoption) for adoption;

Before a proposed adoptive parent who has not previously adopted a child may petition for placement of a child for adoption under s. 48.837, Stats., (nonrelative adoptions); and

Before a proposed adoptive parent who has not previously adopted a child may bring a child into Wisconsin for adoption under s. 48.839, Stats., (international adoptions).

Under s. 48.84, Stats., preadoption training must be provided by a licensed child welfare agency, a licensed private adoption agency (child placing agency), the state adoption information exchange under s. 48.55, Stats., the state adoption center under s. 48.55, Stats., a state-funded foster care and adoption resource center, or a state-funded post adoption resource center.

Section 48.84, Stats., requires the Department to establish, by rule, the number of hours of training necessary, and the training content, including information on issues that may confront adoptive parents, generally, and that may confront adoptive parents of special needs and international children.

Effect on Small Business (Initial Regulatory Flexibility Analysis)

Effective April 1, 2007, 2005 Wisconsin Act 293 creates s. 48.84, Stats., to require prospective adoptive parents to receive preadoption preparation (i.e., training) in the following instances:

Before a child may be placed under s. 48.833, Stats., (special needs adoption) for adoption;

Before a proposed adoptive parent who has not previously adopted a child may petition for placement of a child for adoption under s. 48.837, Stats., (nonrelative adoptions); and

Before a proposed adoptive parent who has not previously adopted a child may bring a child into Wisconsin for adoption under s. 48.839, Stats., (international adoptions).

Under s. 48.84, Stats., licensed private adoption agencies are among the entities that may provide the preadoption training under s. 48.84 (1), Stats. There are 28 such agencies in the state. According to a February 2007 Department survey, at least 25 of the 28 licensed agencies already require and provide training to first-time adoptive parents. The training currently being provided and the training required to be provided under the proposed rule is substantially similar. Consequently, any costs that these agencies may incur under the proposed rule should be nominal.

Small Business Regulatory Coordinator

Rosie Greer

Greerrj@dhfs.state.wi.us

608-266-1279

Fiscal Estimate

Effective April 1, 2007, 2005 Wisconsin Act 293 creates s. 48.84, Stats., to require prospective adoptive parents to receive preadoption preparation (i.e., training) in the following instances:

Before a child may be placed under s. 48.833, Stats., (special needs adoption) for adoption;

Before a proposed adoptive parent who has not previously adopted a child may petition for placement of a child for adoption under s. 48.837, Stats., (nonrelative adoptions); and

Before a proposed adoptive parent who has not previously adopted a child may bring a child into Wisconsin for adoption under s. 48.839, Stats., (international adoptions).

Under s. 48.84, Stats., preadoption training must be provided by a licensed child welfare agency, a licensed private adoption agency (child placing agency), the state adoption information exchange under s. 48.55, Stats., the state adoption center under s. 48.55, Stats., a state-funded foster care and adoption resource center, or a state-funded post adoption resource center. The number of hours of training necessary, the training content, including information on issues that may confront adoptive parents, generally, and that may confront adoptive parents of special needs and international children must be established by the Department by rule.

Under s. 48.84, Stats., the annual cost to the Department of training first-time adoptive parents for special needs adoptions of children in the public child welfare system is estimated to be \$135,000 (\$74,250 GPR and \$60,750 FED). In addition, state law may require first time adoptive parents who use private adoption agencies to be trained by the Department. This would be an additional cost to the Department.

The costs identified above result from the creation of s. 48.84 in 2005 Act 293, rather than this proposed rule. Therefore, this rule has no fiscal effect.

Licensed private adoption agencies are among the entities that may provide the preadoption training under s. 48.84 (1), Stats. There are 28 such agencies in the state. According to a February, 2007 Department survey, at least 25 of the 28 licensed agencies already require and provide training to first–time adoptive parents. The training currently being provided and the training required to be provided under the proposed rule is substantially similar. Consequently, any costs that these agencies may incur under the proposed rule should be nominal.

Obtaining Copies of Rules and Fiscal Estimate

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wisconsin Administrative Rules Website at:

<http://adminrules.wisconsin.gov> or by contacting the person listed below.

Contact Person

Dale Langer
 Manager, Adoption and Consultation Section
 Division of Children and Family Services
 DHFS/DCFS
 P.O. Box 8916
 Madison, Wisconsin 53708–8916
 (608) 266–3595
 Fax (608) 264–6750
langedw@dhfs.state.wi.us

Notice of Hearing Workforce Development [CR 07–030]

NOTICE IS HEREBY GIVEN that pursuant to Section 49.155 (6) and s. 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to child care rates and affecting small businesses.

Hearing Information

May 7, 2007 Madison
 Monday G.E.F. 1 Building, A415
 1:30 p.m. 201 E. Washington Avenue

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267–9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Note: Complaint forms are available from the Department of Regulation and Licensing, Division

of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department's website at: <http://drl.wi.gov> and 227.11, Stats.

Statutes interpreted: Section 49.155 (6), Stats.

Related statutes and rules: Section 48.65, Stats, and Chapters HFS 45, 46, and 55; Section 48.651, Stats., and Chapter DWD 55

Explanation of agency authority. own and operate 50 or fewer truck tractors Each county shall set the rate for licensed providers so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. The maximum reimbursement rate for Level I certified providers may not exceed 75% of the rate established for licensed providers, and the maximum reimbursement rate for Level II certified providers may not exceed 50% of the rate established for licensed providers.

Summary of the proposed rule. Under s. DWD 56.06, the Department or each county must survey all licensed providers each year to determine the child care prices they charge the general community. The county or tribal agency annually sets maximum reimbursement rates based on the survey, unless the Department sets multi–county rates. The maximum rate for licensed providers is set so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. Separate maximum rates are set for licensed group child care centers, licensed family child care centers, Level I certified family child care providers, and Level II certified family child care providers. Separate maximum rates are also set for children in various age groupings. The current rates are multi–county rates set by the Department in 2006.

In past years, the adjusted rates based on the annual survey have generally become effective January 1 of the new year. This rule provides that the rates will not be adjusted for the year beginning January 1, 2007, and the rates effective on December 31, 2006, will remain in effect.

Summary of related federal regulations. Under 45 CFR 98.43, a state must certify that state payment rates for the provision of child care services funded under the Child Care and Development Fund are sufficient to ensure equal access to child care services for eligible families as families not eligible for child care assistance. At a minimum, the state must show that it considered 3 key elements in determining that its child care program provides equal access for eligible families: 1) Adequate payment rates based on a local market rate survey conducted no earlier than two years prior to the effective date of the current plan; 2) Choice of the full range of categories and types of providers; and 3) Affordable copayments.

In the commentary issued with the regulation, the Administration for Children and Families notes that rates established at least at the 75th percentile of the market rate would be regarded as providing equal access. Under the former title IV–A child care program, states were required to set rates at this level. (63 FR 39936, 39959, July 24, 1998)

Comparison with rules in adjacent states. A 2006 study by the National Women's Law Center, entitled *State Child Care Assistance Policies 2006: Gaps Remain, With New Challenges Ahead* compared state 2006 reimbursement rates to market rates for child care centers. The study found that Wisconsin was one of 9 states that had reimbursement rates at or above the 75th percentile of the market rate in 2006 and one of 22 states that had reimbursement rates at or above 75th percentile of the market rate in 2001. The Department does not have comparative information on 2007 rates.

Michigan. Reimbursement rates have not been increased since 1997. Rates in 2006 were at the 75th percentile of 1996

market rates. In Wayne County, the percentage difference between the state rate and the 75th percentile of the market rate was –42% for center care of a 4–year–old and –46% for care of a one–year–old.

Minnesota. In Hennepin County, the percentage difference between the state 2006 rate and the 75th percentile of the market rate was –10% for center care of a 4–year–old and –12% for care of a one–year–old.

Illinois. In Cook County, the percentage difference between the state 2006 rate and the 75th percentile of the market rate was –33% for center care of a 4–year–old and –25% for care of a one–year–old.

Iowa. The percentage difference between the statewide 2006 rate and the 75th percentile of the market rate was –4% for center care of a 4–year–old and –6% for care of a one–year–old.

The National Women’s Law Center study *State Child Care Assistance Policies 2006: Gaps Remain, With New Challenges Ahead* is available at: <http://www.nwlc.org/pdf/StateChildCareAssistancePoliciesReport2006web.pdf>.

Summary of factual data and analytical methodologies. The child care subsidy budget is expected to have a substantial deficit by the end of state fiscal year 2006–07. While many factors will have an impact on the program’s final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06–07 budget authorization by approximately \$46 million. This is due to flat federal funding, rising caseload, and increased provider costs.

By not increasing the maximum county rates reimbursed to child care providers, the Department will avoid the increased cost of using the rates based on the 2006 provider survey. By comparing the current rates used for the reimbursement versus the rates that would otherwise go into effect and annualizing the results, it is estimated that the Department will realize about \$8,400,000 in annual savings in federal block grant funds.

Effect of rule on small businesses. The rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses. The Department’s Small Business Regulatory Coordinator is Jennifer Jirschele, jennifer.jirschele@dwd.state.wi.us, (608) 266–1023.

Analysis used to determine effect on small businesses. Pursuant to direction by the Small Business Regulatory Review Board, the Department adopted the following definitions to use in making the determination of whether a rule will have a significant economic impact on a substantial number of small businesses:

“Significant economic impact” means the rule increases overall expenses of small businesses by more than 5% per year or the rule decreases overall revenue of small businesses by more than 5% per year.

“Substantial number” means more than 25% of the businesses affected by the scope of the rule.

The total child care subsidy annual budget is \$300 million. The Department estimates that \$270 million is annually paid to 7,000 child care providers that are small businesses. Not increasing the child care subsidy maximum rates is estimated to decrease annual revenue to all child care providers by \$8.4 million and decrease revenue to child care providers that are small businesses by \$7.56 million. On average, the annual child care funds to a child care provider that is a small business is \$38,571. The average decreased revenue from the child care subsidy program to a provider due to not increasing the child care subsidy maximum rates is \$1,080 or 2.8%. The percentage decrease in overall revenue to a provider will be significantly less than 2.8% due to revenue from private pay families and copayments from families receiving child care assistance. Adm 47.02 (2) is repealed.

Agency Contact

Barbara Stiefvater, Child Care Section, (608) 266–8200, barbara.stiefvater@dwd.state.wi.us.

Place where comments are to be submitted and deadline for submission. An electronic copy of the proposed rules is available at <http://www.dwd.state.wi.us/dwd/hearings.htm>. A copy of the proposed rules is also available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule’s promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707–7946
(608) 267–9403
elaine.pridgen@dwd.state.wi.us

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than May 9, 2007, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

Dentistry Examining Board

(CR 06-016)

Ch. DE 7, relating to the definition of “local anesthesia”.

Health and Family Services

(CR 06-086)

Ch. HFS 172, relating to public pools and water attractions.

Workforce Development

(CR 07-003)

Ch. DWD 290, relating to adjustment of thresholds for application of prevailing wage rates.

Workforce Development

(CR 07-009)

Chs. DWD 100 to 150, relating to unemployment insurance technical corrections.

Workforce Development

(CR 07-010)

Ch. DWD 295, relating to enforcement of indenture agreements.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266–7275 for updated information on the effective dates for the listed rule orders.

Agriculture, Trade and Consumer Protection (CR 06–085)

An order affecting ch. ATCP 156, relating to seed potato certification and grading.
Effective 5–1–07.

Medical Examining Board (CR 06–114)

An order affecting ch. Med 1, relating to the requirements for completion of the 3–step sequence of the United States Medical Licensing Examination (USMLE).
Effective 5–1–07.

Natural Resources (CR 06–023)

An order affecting chs. NR 127 and 160, relating to the Safe Drinking Water Loan Program.
Effective 6–1–07.

Natural Resources (CR 06–025)

An order affecting ch. NR 520, relating to balances in the Waste Management Program Revenue Account.
Effective 6–1–07.

Natural Resources (CR 06–037)

An order affecting chs. NR 10 and 45, relating to correcting management unit boundaries, clarifying trapping requirements, correcting cross–references, and update rules on the identification of tree stands on state lands.
Effective 7–1–07.

Natural Resources (CR 06–047)

An order affecting chs. NR 406, 407, and 410, relating to

air pollution permit exemptions and air pollution permit exemption fees and affecting small business.
Effective 6–1–07.

Natural Resources (CR 06–079)

An order affecting chs. NR 406 and 410, relating to construction permit waivers and affecting small business.
Effective 6–1–07.

Occupational Therapists Affiliated Credentialing Board (CR 06–115)

An order affecting ch. OT 3, relating to continuing education waivers.
Effective 6–1–07.

Optometry Examining Board (CR 06–116)

An order affecting chs. Opt 1 and 3 to 7, relating to examinations, endorsement, delegation, TPA/DPA, renewal and continuing education relating to optometrists.
Effective 6–1–07.

Transportation (CR 06–128)

An order affecting ch. Trans 102, relating to proof of identity.
Effective 5–1–07.

Workforce Development (CR 06–138)

An order affecting ch. DWD 277, relating to notice to home care consumers and workers.
Effective 5–1–07.

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707-7840

First Class

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

First Class Mail

Dated Material. Please Do Not Delay!